

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 16th day of August, Two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Jing Lin,

Petitioner,

-v.-

United States Department of Justice,
Attorney General Gonzales,

Respondent.

No. 05-6725-ag
NAC
A79-458-421

FOR PETITIONER: Dehai Zhang, Flushing, New York.

FOR RESPONDENT: Colm F. Connolly, United States Attorney for the District of Delaware, Seth M. Beausang, Assistant United States Attorney, Wilmington, Delaware.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Jing Lin, through counsel, petitions for review of the BIA’s decision affirming
3 Immigration Judge (“IJ”) Noel Ferris’s decision denying her application for asylum, withholding
4 of removal, and relief under the Convention Against Torture (“CAT”). In that same decision, the
5 BIA also denied her motion to remand. We assume the parties’ familiarity with the underlying
6 facts and procedural history of this case.

7 The government correctly asserts that Lin failed to raise any arguments regarding the
8 denial of her original claims in her brief to this Court; she challenges only the denial of her
9 motion to remand based on the birth of two children in the United States. Therefore, those
10 arguments are waived, *see Jian Wen Wang v. BCIS*, 437 F.3d 276, 278 (2d Cir. 2006), and the
11 only issue before this Court is whether the BIA erred in denying Lin’s motion to remand.

12 The BIA’s denial of a motion to remand is held to the substantive standard of review for
13 motions to reopen and reconsider, *i.e.*, abuse of discretion. *Li Yong Cao v. Dep’t of Justice*, 421
14 F.3d 149, 151 (2d Cir. 2005). An abuse of discretion will be found “in those circumstances
15 where the [BIA’s] decision provides no rational explanation, inexplicably departs from
16 established policies, is devoid of any reasoning, or contains only summary conclusions or
17 statements; that is to say, where the [BIA] has acted in an arbitrary or capricious manner.” *Ke*
18 *Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).
19 The BIA has held that it may deny motions to remand and motions to reopen when a *prima facie*
20 case for the relief sought is not established. *Matter of Coelho*, 20 I. & N. Dec. 464 (BIA 1992).

21 Here, the BIA did not abuse its discretion in determining that Lin failed to prove *prima*
22 *facie* eligibility for asylum, withholding of removal, or CAT relief based on the birth of two
23 children in the United States. None of the documents submitted in support of her motion to

1 remand discuss whether there is a national, or regional, policy regarding the treatment of parents
2 with U.S.-born children. Accordingly, the BIA did not abuse its discretion in determining that
3 Lin failed to produce sufficient evidence that she would be subject to persecution under the
4 policy upon her return to China with two U.S.-citizen children. *See Jian Xing Huang v. INS*, 421
5 F.3d 125, 129 (2d Cir. 2005) (stating that an applicant’s well-founded fear claim based on U.S.-
6 born children is “speculative at best” when he fails to present “solid support” that he would be
7 subject to the family planning policy upon his return to China).

8 Lin attempts to analogize her case to the Third Circuit’s decision in *Jian Lian Guo v.*
9 *Ashcroft*, 386 F.3d 556 (3rd Cir. 2004), arguing that like the petitioner in *Guo*, her children were
10 born very close together and there is a greater chance of persecution under the family planning
11 policy as a result. In *Guo*, the Third Circuit found that an affidavit by Dr. John Aird and the
12 1998 State Department Profile of Asylum Claims was sufficient for the applicant to prove prima
13 facie eligibility for her asylum claim, which was based on two children born in the United States.
14 *Jian Lian Guo*, 386 F.3d at 565-66. As we have in the past, we reject this holding, as we require
15 more specific evidence that U.S.-born children would be counted as Chinese citizens under the
16 family planning policy. *See, e.g., Wei Guang Wang v. BIA*, 437 F.3d 270, 274 (2d Cir. 2006).

17 Accordingly, the petition for review is DENIED. Having completed our review, any stay
18 of removal that the Court previously granted in this petition is VACATED, and any pending
19 motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral
20 argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure
21 34(a)(2), and Second Circuit Local Rule 34(d)(1).

22
23 FOR THE COURT:
24 Roseann B. MacKechnie, Clerk
25

26 By: _____

